

NEW YORK STATE SUPREME COURT
ERIE COUNTY

-----X
FRANCIS ZUBLER,

Plaintiff,

-against-

DIOCESE OF BUFFALO and BASILICA OF OUR
LADY OF VICTORY CHURCH AND SCHOOL,

Defendants.
-----X

Index No.: _____

Date Filed: November 6, 2019

SUMMONS

Plaintiff designates Erie County
as the place of trial.

The basis of venue is one
defendant's residence.

Child Victims Act Proceeding
22 NYCRR 202.72

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: November 6, 2019

Respectfully Yours,

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COMPLAINT

Child Victims Act Proceeding
22 NYCRR 202.72

Plaintiff Francis Zubler, by and through his attorneys, the Marsh Law Firm PLLC and Pfau Cochran Vertetis Amala PLLC, respectfully alleges for his complaint the following:

I. INTRODUCTION

1. The Diocese of Buffalo (the “Diocese”) knew for decades that its priests, clergy, teachers, school administrators, employees, and volunteers were using their positions within the Diocese to groom and to sexually abuse children. Despite that knowledge, the Diocese failed to take reasonable steps to protect children from being sexually abused and actively concealed the abuse.

2. Since 2018, following decades of denial and cover-up, the Diocese of Buffalo began releasing the names of priests who were accused of sexually abusing children. While the Diocese of Buffalo has listed at least 80 priests with substantiated claims of sexual abuse of a minor, it has been reported that there are well over a 100 clergy in the Diocese of Buffalo who have faced allegations of sexually abusing a child. Based on the Diocese’s wrongful conduct, a reasonable person could and would conclude that it knowingly and recklessly disregarded the abuse of children and chose to protect its reputation and wealth over those who deserved protection. The result is not surprising: for decades hundreds, if not thousands, of children were

sexually abused by Catholic clergy and others who served the Diocese. The plaintiff in this lawsuit is one of many children who was sexually abused because of the Diocese's wrongful conduct.

II. PROCEEDING IN ACCORDANCE WITH CPLR 214-G AND 22 NYCRR 202.72

3. This complaint is filed pursuant to the Child Victims Act (CVA) 2019 Sess. Law News of N.Y. Ch. 11 (S. 2440), CPLR 214-G, and 22 NYCRR 202.72. The CVA opened a historic one-year one-time window for victims and survivors of childhood sexual abuse in the State of New York to pursue lapsed claims. Prior to the passage of the CVA, plaintiff's claims were time-barred the day he turned 22 years old. The enactment of the CVA allows victims and survivors of childhood sexual abuse, for the first time in their lives, to pursue restorative justice in New York State.

III. PARTIES

4. Plaintiff Francis Zubler is an adult male who currently resides in Hamburg, New York.

5. Upon information and belief, the Diocese is currently a not-for-profit religious corporation organized under New York law with its principal office in Buffalo, New York.

6. Upon information and belief, at all relevant times the Diocese conducted business as the "Diocese of Buffalo" and/or "Buffalo Diocese."

7. Upon information and belief, at all relevant times the Diocese employed priests, school administrators, teachers, religious sisters, and/or others who served various Catholic institutions and families, including plaintiff Francis Zubler and his family.

8. Upon information and belief, Father William Ward ("Father Ward") was a priest employed by the Diocese to serve Catholic families, including plaintiff Francis Zubler and his family. During the time Father Ward was employed by the Diocese, he used his position as a priest to groom and to sexually abuse plaintiff Francis Zubler.

9. To the extent that the Diocese was a different entity, corporation, or organization during the period of time during which Father Ward used his position as a priest to sexually abuse plaintiff Francis Zubler, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

10. To the extent the Diocese is a successor to a different entity, corporation, or organization which existed during the period of time during which Father Ward used his position as a priest to sexually abuse plaintiff Francis Zubler, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

11. All such Diocese-related entities, corporations, or organizations are collectively referred to herein as the “Diocese.”

12. Upon information and belief, at all relevant times defendant Basilica of Our Lady of Victory Church (“Our Lady of Victory”) was a not-for-profit religious corporation organized under New York law and wholly owned, operated, and controlled by the Diocese.

13. Upon information and belief, Our Lady of Victory is currently a not-for-profit religious corporation organized under New York law with its principal office in Lackawanna, New York.

14. Upon information and belief, at all relevant times Our Lady of Victory conducted business as “Basilica of Our Lady of Victory,” “Our Lady of Victory Church,” “Our Lady of Victory Parish,” “Our Lady of Victory School,” “OLV,” and/or “Our Lady of Victory.”

15. Upon information and belief, Our Lady of Victory is a parish with a church and school located in Lackawanna, New York.

16. Upon information and belief, Father William Ward was a priest employed by Our Lady of Victory to serve Catholic families in its geographic jurisdiction, including plaintiff Francis

Zubler and his family. During the time Father William Ward was employed by Our Lady of Victory, he used his position as a priest to groom and to sexually abuse plaintiff Francis Zubler.

17. To the extent that Our Lady of Victory was a different entity, corporation, or organization during the period of time during which Father Ward used his position as a priest to sexually abuse Francis Zubler, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

18. To the extent Our Lady of Victory is a successor to a different entity, corporation, or organization which existed during the period of time during which Father Ward used his position as a priest to sexually abuse Francis Zubler, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

19. All such Our Lady of Victory-related entities, corporations, or organizations are collectively referred to herein as “Our Lady of Victory.”

IV. VENUE

20. Venue is proper because the Diocese is a domestic corporation authorized to transact business in New York with its principal office located in Erie County.

21. Venue is proper because Our Lady of Victory is a domestic corporation authorized to transact business in New York with its principal office located in Lackawanna, New York.

22. Venue is proper because Erie is the county in which a substantial part of the events or omissions giving rise to plaintiff’s claims occurred.

23. Venue is proper because plaintiff Francis Zubler currently resides in Hamburg, New York.

V. STATEMENT OF FACTS AS TO PLAINTIFF FRANCIS ZUBLER

24. Upon information and belief, at all relevant times the Diocese was the owner of Our Lady of Victory and held itself out to the public as the owner of Our Lady of Victory.

25. Upon information and belief, at all relevant times the Diocese, its agents, servants, and employees managed, maintained, operated, and controlled Our Lady of Victory.

26. Upon information and belief, at all relevant times the Diocese employed priests, school administrators, teachers, religious sisters, and/or and others who served Catholic families at Our Lady of Victory, including plaintiff Francis Zubler and his family.

27. Upon information and belief, at all relevant times the Diocese, its agents, servants, and employees managed, maintained, operated, and controlled Our Lady of Victory, and held out to the public its agents, servants, and employees as those who managed, maintained, operated, and controlled Our Lady of Victory.

28. Upon information and belief, at all relevant times the Diocese was responsible for the hiring and staffing, and did the hiring and staffing, at Our Lady of Victory.

29. Upon information and belief, at all relevant times the Diocese was responsible for and did the recruitment and staffing of volunteers at Our Lady of Victory.

30. Upon information and belief, at all relevant times the Diocese materially benefited from the operation of Our Lady of Victory, including the services of Father Ward and the services of those who managed and supervised Father Ward.

31. Upon information and belief, at all relevant times Our Lady of Victory owned a parish, church, and school.

32. Upon information and belief, at all relevant times Our Lady of Victory held itself out to the public as the owner of Our Lady of Victory.

33. Upon information and belief, at all relevant times Our Lady of Victory employed priests and others who served Catholic families, including plaintiff Francis Zubler and his family.

34. Upon information and belief, at all relevant times Our Lady of Victory, its agents, servants, and employees managed, maintained, operated, and controlled Our Lady of Victory, and held out to the public its agents, servants and employees as those who managed, maintained, operated, and controlled Our Lady of Victory.

35. Upon information and belief, at all relevant times Our Lady of Victory was responsible for and did the staffing and hiring at Our Lady of Victory.

36. Upon information and belief, at all relevant times Our Lady of Victory was responsible for and did the recruitment and staffing of volunteers at Our Lady of Victory.

37. Upon information and belief, at all relevant times Our Lady of Victory materially benefitted from the operation of Our Lady of Victory, including the services of Father Ward and the services of those who managed and supervised Father Ward.

38. Upon information and belief, at all relevant times Father Ward was a priest of the Diocese.

39. Upon information and belief, at all relevant times Father Ward was on the staff of, acted as an agent of, and served as an employee of the Diocese.

40. Upon information and belief, at all relevant times Father Ward was acting in the course and scope of his employment with the Diocese.

41. Upon information and belief, at all relevant times Father Ward was employed by the Diocese and assigned to Our Lady of Victory.

42. Upon information and belief, at all relevant times Father Ward was a priest of Our Lady of Victory.

43. Upon information and belief, at all relevant times Father Ward was on the staff of, was an agent of, and served as an employee of Our Lady of Victory.

44. Upon information and belief, at all relevant times Father Ward was acting in the course and scope of his employment with Our Lady of Victory.

45. Upon information and belief, at all relevant times Father Ward had an office on the premises of Our Lady of Victory.

46. When plaintiff Francis Zubler was a minor, he and his parents were members of the Diocese and Our Lady of Victory, including when Francis was an altar boy.

47. At all relevant times, the Diocese and Our Lady of Victory, their agents, servants, and employees, held Father Ward out to the public, to Francis, and to his parents, as their agent and employee.

48. At all relevant times, the Diocese and Our Lady of Victory, their agents, servants, and employees, held Father Ward out to the public, to Francis, and to his parents, as having been vetted, screened, and approved by those defendants.

49. At all relevant times, Francis and his parents reasonably relied upon the acts and representations of the Diocese and Our Lady of Victory, their agents, servants, and employees, and reasonably believed that Father Ward was an agent or employee of those defendants who was vetted, screened, and approved by those defendants.

50. At all relevant times, Francis and his parents trusted Father Ward because the Diocese and Our Lady of Victory held him out as someone who was safe and could be trusted with the supervision, care, custody, and control of Francis.

51. At all relevant times, Francis and his parents believed that the Diocese and Our Lady of Victory would exercise such care as would a parent of ordinary prudence in comparable circumstances when those defendants assumed supervision, care, custody, and control of Francis.

52. When Francis was a minor, Father Ward sexually abused him.

53. Francis was sexually abused by Father Ward when Francis was approximately 13 years old.

54. Based on the representations of the Diocese and Our Lady of Victory that Father Ward was safe and trustworthy, Francis and his parents allowed Francis to be under the supervision of, and in the care, custody, and control of, the Diocese and Our Lady of Victory, including when Francis was sexually abused by Father Ward.

55. Based on the representations of the Diocese and Our Lady of Victory that Father Ward was safe and trustworthy, Francis and his parents allowed Francis to be under the supervision of, and in the care, custody, and control of, Father Ward, including when Francis was sexually abused by Father Ward.

56. Neither Francis nor his parents would have allowed him to be under the supervision of, or in the care, custody, or control of, the Diocese, Our Lady of Victory, or Father Ward if the Diocese or Our Lady of Victory had disclosed to Francis or his parents that Father Ward was not safe and was not trustworthy, and that he in fact posed a danger to Francis in that Father Ward was likely to sexually abuse Francis.

57. No parent of ordinary prudence in comparable circumstances would have allowed Francis to be under the supervision of, or in the care, custody, or control of, the Diocese, Our Lady of Victory, or Father Ward if the Diocese or Our Lady of Victory had disclosed to Francis or his parents that Father Ward was not safe and was not trustworthy, and that he in fact posed a danger to Francis in that Father Ward was likely to sexually abuse him.

58. From approximately 1955 through 1956, Father Ward exploited the trust and authority vested in him by defendants by grooming Francis to gain his trust and to obtain control over him as part of Father Ward's plan to sexually molest and abuse Francis and other children.

59. Father Ward used his position of trust and authority as a priest of the Diocese and of Our Lady of Victory to groom Francis and to sexually abuse him, including when Francis was under the supervision of, and in the care, custody, or control of, the Diocese, Our Lady of Victory, and Father Ward.

60. Father Ward's sexual abuse of Francis occurred during activities that were sponsored by, or were a direct result of activities sponsored by, the Diocese and Our Lady of Victory, including during a trip to the movies that Father Ward organized as his priest.

61. Upon information and belief, prior to the times mentioned herein, Father Ward was a known sexual abuser of children.

62. Upon information and belief, at all relevant times, defendants, their agents, servants, and employees, knew or should have known that Father Ward was a known sexual abuser of children.

63. Upon information and belief, at all relevant times, it was reasonably foreseeable to defendants, their agents, servants, and employees that Father Ward's sexual abuse of children would likely result in injury to others, including the sexual abuse of Francis and other children by Father Ward.

64. Upon information and belief, the defendants, their agents, servants, and employees, knew or should have known that Father Ward was sexually abusing Francis and other children at Our Lady of Victory and elsewhere.

65. Upon information and belief, the Diocese and Our Lady of Victory, their agents, servants, and employees, knew or should have known before and during Father Ward's sexual abuse of Francis that priests, school administrators, teachers, religious sisters, and/or other persons

serving the Diocese and Our Lady of Victory had used their positions with those defendants to groom and to sexually abuse children.

66. Upon information and belief, the Diocese and Our Lady of Victory, their agents, servants, and employees, knew or should have known before and during Father Ward's sexual abuse of Francis that such priests, school administrators, teachers, religious sisters, and/or other persons could not be "cured" through treatment or counseling.

67. Upon information and belief, the Diocese and Our Lady of Victory, their agents, servants, and employees, concealed the sexual abuse of children by Father Ward in order to conceal their own bad acts in failing to protect children from him, to protect their reputation, and to prevent victims of such sexual abuse by him from coming forward during the extremely limited statute of limitations prior to the enactment of the CVA, despite knowing that Father Ward would continue to molest children.

68. Upon information and belief, the Diocese and Our Lady of Victory, their agents, servants, and employees, consciously and recklessly disregarded their knowledge that Father Ward would use his position with the defendants to sexually abuse children, including Francis.

69. Upon information and belief, the Diocese and Our Lady of Victory, their agents, servants, and employees, disregarded their knowledge that Father Ward would use his position with them to sexually abuse children, including Francis.

70. Upon information and belief, the Diocese and Our Lady of Victory, their agents, servants, and employees, acted in concert with each other or with Father Ward to conceal the danger that Father Ward posed to children, including Francis, so that Father Ward could continue serving them despite their knowledge of that danger.

71. Upon information and belief, the Diocese and Our Lady of Victory, their agents, servants, and employees, knew that their negligent, reckless, and outrageous conduct would inflict severe emotional and psychological distress, as well as personal physical injury, on others, including Francis, and he did in fact suffer severe emotional and psychological distress and personal physical injury as a result of their wrongful conduct.

72. Upon information and belief, the Diocese and Our Lady of Victory, their agents, servants, and employees, concealed the sexual abuse of children by priests, school administrators, teachers, religious sisters, and/or others in order to conceal their own bad acts in failing to protect children from being abused, to protect their reputation, and to prevent victims of such sexual abuse from coming forward during the extremely limited statute of limitations prior to the enactment of the CVA, despite knowing that those priests, school administrators, teachers, religious sisters, and/or and other persons would continue to molest children.

73. By reason of the wrongful acts of the Diocese and Our Lady of Victory as detailed herein, Francis sustained physical and psychological injuries, including but not limited to, severe emotional and psychological distress, humiliation, fright, dissociation, anger, depression, anxiety, family turmoil and loss of faith, a severe shock to his nervous system, physical pain and mental anguish, and emotional and psychological damage, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature, and Francis has and/or will become obligated to expend sums of money for treatment.

VI. CAUSES OF ACTION AS TO PLAINTIFF FRANCIS ZUBLER

A. FIRST CAUSE OF ACTION – NEGLIGENCE

74. Plaintiff Francis Zubler repeats and re-alleges all of his allegations above and below.

75. The Diocese and Our Lady of Victory had a duty to take reasonable steps to protect plaintiff Francis Zubler, a child, from foreseeable harm when he was under their supervision and in their care, custody, and control.

76. The Diocese and Our Lady of Victory also had a duty to take reasonable steps to prevent Father Ward from using the tasks, premises, and instrumentalities of his position with the defendants to target, groom, and sexually abuse children, including Francis.

77. The Diocese and Our Lady of Victory were supervising Francis, and had care, custody, and control of Francis, when he served as an altar boy and at other times, during which time those defendants had a duty to take reasonable steps to protect him.

78. These circumstances created a special relationship between the Diocese and Francis, and between Our Lady of Victory and Francis, which imposed on each of those defendants a duty to exercise the degree of care of a parent of ordinary prudence in comparable circumstances.

79. The Diocese and Our Lady of Victory breached each of the foregoing duties by failing to exercise reasonable care to prevent Father Ward from harming Francis, including sexually abusing him.

80. In breaching their duties, including hiring, retaining, and failing to supervise Father Ward, giving him access to children, entrusting their tasks, premises, and instrumentalities to him, failing to train their personnel in the signs of sexual predation and to protect children from sexual abuse and other harm, failing to warn Francis, his parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for Francis and other children who were under their supervision and in their care, custody, and control, the Diocese and Our Lady of Victory created a risk that Francis would be sexually abused by Father Ward. The Diocese and Our Lady

of Victory through their actions and inactions created an environment that placed Francis in danger of unreasonable risks of harm under the circumstances.

81. In breaching their duties, including hiring, retaining, and failing to supervise Father Ward, giving him access to children, entrusting their tasks, premises, and instrumentalities to him, failing to train their personnel in the signs of sexual predation and to protect children from sexual abuse and other harm, failing to warn Francis, his parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for Francis and other children who were under their supervision and in their care, custody, and control, the Diocese and Our Lady of Victory acted willfully and with conscious disregard for the need to protect Francis. The Diocese and Our Lady of Victory through their actions and inactions created an environment that placed Francis in danger of unreasonable risks of harm under the circumstances.

82. It was reasonably foreseeable that defendants' breach of these duties of care would result in the sexual abuse of Francis.

83. As a direct and proximate result of the acts and omissions of the Diocese and Our Lady of Victory, Father Ward groomed and sexually abused Francis, which has caused Francis to suffer general and special damages as more fully described herein.

B. SECOND CAUSE OF ACTION – OUTRAGE AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

84. Plaintiff Francis Zubler repeats and re-alleges all of his allegations above and below.

85. The Diocese and Our Lady of Victory engaged in reckless, extreme, and outrageous conduct by providing Father Ward with access to children, including plaintiff Francis Zubler, despite knowing that he would likely use his position to groom and to sexually abuse them, including Francis. Their misconduct was so shocking and outrageous that it exceeds the reasonable

bounds of decency as measured by what the average member of the community would tolerate and demonstrates an utter disregard by them of the consequences that would follow.

86. As a result of this reckless, extreme, and outrageous conduct, Father Ward gained access to Francis and sexually abused him.

87. The Diocese and Our Lady of Victory knew that this reckless, extreme, and outrageous conduct would inflict severe emotional and psychological distress, including personal physical injury, on others, and Francis did in fact suffer severe emotional and psychological distress and personal physical injury as a result, including severe mental anguish, humiliation and emotional and physical distress.

VII. CPLR 1603 – NO APPORTIONMENT OF LIABILITY

88. Pursuant to CPLR 1603, the foregoing causes of action are exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(2), CPLR 1602(5), 1602(7) and 1602(11), thus precluding defendants from limiting their liability by apportioning some portion of liability to any joint tortfeasor.

VIII. PRAYER FOR RELIEF

89. Plaintiff Francis Zubler demands judgment against the defendants named in his causes of action, together with compensatory and punitive damages to be determined at trial, and the interest, cost and disbursements pursuant to his causes of action, and such other and further relief as the Court deems just and proper.

90. Plaintiff Francis Zubler specifically reserves the right to pursue additional causes of action, other than those outlined above, that are supported by the facts pleaded or that may be supported by other facts learned in discovery.

Dated: November 6, 2019

Respectfully Yours,

MARSH LAW FIRM PLLC

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